TITLE 327 WATER POLLUTION CONTROL BOARD

#01-51 (WPCB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from February 1, 2003, through March 3, 2003, on IDEM's draft rule language. IDEM received comments from the following parties:

Hoosier Environmental Council	(HEC)
Chad G. Frahm, Indiana Farm Bureau	(IFB)
Terry Fleck, Indiana Pork Advocacy Coalition	(INPAC)
Sierra Club	(SC)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: We do not support general permits for confined feeding operations. General permits do not allow for public notice and comment on this issue that has attracted so much public attention and controversy over a period of years. (HEC)

Response: IDEM believes that compliance with the general permit rule will ensure appropriate water quality protection. The general permit rule provides for a determination that an individual permit be required and the public may request that the department process an individual permit.

Comment: Confined feeding operations should be subject to individual permits. The state has numerous waterbodies that are affected by E. coli contamination, nitrogen and phosphorous. Manure storage and land application of manure have the potential to contribute to these water quality problems. They should be regulated in a manner similar to other point source dischargers. (HEC)

Response: The standards that a CAFO must follow do not significantly differ under a general permit from that which would be required under an individual permit. The major difference between general permit and individual permits would be the type and amount of public participation and the necessity for site-specific conditions for a given operation to address unique problems. The general permit rule retains the authority of the department to require individual permits in situations in which broad public interest exists and/or there are unique issues to address that would not be satisfactorily dealt with through compliance with the general permit rule.

Comment: For waters that are already impaired, the provision of a general permit would allow new sources to exacerbate that impairment with no specific effluent limits. This is not consistent with the state's anti-degradation provisions. (HEC)(SC)

Response: The specific effluent limit for a CAFO is zero. CAFOs are not allowed to discharge.

Comment: IAC 5-4-3 (b) 3 We do not understand why the proposed rule contains an exemption for aquatic animals. They also have the potential to exacerbate water pollution in waters that are already impaired, in contrast with State anti-degradation provisions. (HEC)

Response: Aquatic animal operations are not exempt from permitting. Aquatic animals are regulated under 327 IAC 5-4-5. The federal regulations for aquatic animal operations have not been amended, therefore no changes are being suggested in this rulemaking.

Comment: (4) Land application provisions of the rule should not be limited to land under the control of the confined feeding owner or operator. (HEC)

*Response :*IDEM agrees and has amended the rule language to clarify that the owner or operator who land applies on land not under his control must meet specific setback requirements in cases where the owner or operator of the CAFO does not have control over the use of other conservation practices such as a filter strip.

Comment: (7) Should say "man made conveyance". (HEC)
Response: The language in the definition is, verbatim, federal language.

Comment: (8)(13)(11) Should say "Pollutants are discharged directly to waters of the state." The provision that this provision only applies to waters "that originate outside of and"... ignores the fact that many waters of the state originate on private property. These headwater streams should have equal protection. (HEC)
Response: The language in the definition is, verbatim, federal language.

Comment: 327 IAC 15-15-5(b)(5) - (b)(8) Notice of Intent Letter Requirements. IFB recommends that requirements under (b)(5) through (b)(8) be deleted. This information was not in the previous draft rule and is not required under the federal NPDES statute or rule. (IFB)
Response: IDEM has substantially amended the section on Notice of Intent requirements. The language as it is currently drafted, reflects the requirements found in the amended federal rules.

Comment: 327 IAC 15-15-5(b)(9) Receiving Stream Information. Because CAFOs are not allowed to discharge under an NPDES permit like other industries, there are no streams that will be receiving any discharge from a CAFO. IFB recommends that this requirement be changed to "Location of nearest potential receiving stream." (IFB)
Response: IDEM has amended this language based on discussions with interested parties and EPA and has removed this specific requirement. The amended federal rules no longer require such information for NOIs from CAFOs.

Comment: 327 IAC 15-15-8 "Specific Permit Conditions". IFB strongly urges IDEM to produce citations from federal statute or federal rule that requires each of the conditions in section 8. IFB recommends that conditions (1) through (6) and Condition (8) be deleted and only Condition (7) be required. If IDEM chooses not to delete these conditions, IFB submits the following comments in regard to each condition listed under this section.
a. Condition (1) is too broad and must be better defined. Does IDEM intend for the phrase "potential for discharge" to be identical to the federal definition in the new EPA CAFO/NPDES rule? Also, IFB recommends that the phrase "waters of the state" be changed to "waters of the United States."
b. Condition (2) should also allow for maximum flexibility as new standards are developed instead of specifically stating the FOTG 590 Standard.
c. For Condition (3), IFB recommends the length of time to keep such records should be no more than three (3) years.
d. In Condition (4), are the "self-inspection reports" the same as the self-monitoring records?
e. Conditions (5) and (6) have many faults and IFB recommends that the entire subsection be deleted. IFB requests that specific federal statute or rule citations be provided if any part of this condition is required by federal law or regulation. The ambiguous phrase "good housekeeping practices" in Condition (6) is not defined, vague and not relevant to the regulation of discharges from a point source.
f. Condition (8). If the department's intent is to make this information along with the state MMP be equivalent to a Nutrient Management Plan as required by the new federal CAFO rule, then that should be stated in this rule. (IFB)
Response: IDEM has made a number of changes to the section dealing with specific permit conditions. Many of the deletions requested in this comment have already occurred. IDEM is open to a discussion as to what type of standards should be allowed, keeping in mind the need for flexibility. However, each affected party must understand what is required of him or her, therefore it is important that the rule contain specific standards that allow people to understand the regulatory expectations of the program.

Comment: We support the elimination of a dual permitting structure for CAFOs brought on by the Save the Valley decision. We will continue to support legislative and administrative efforts to reduce this burden on Indiana's livestock industry. (IFB)

Response: IDEM agrees that a streamlined system would be beneficial for the regulated community as well as the agency. However, IDEM continues to support the need for construction approval, as required under existing state law (as of April 10, 2003) and current Water Board CFO regulations.

Comment: INPAC notes that given extremely compressed time frame for the general permit rule by virtue of the federal court order, some, if not many, of these issues may need to be re-addressed as we receive guidance from the federal Environmental Protection Agency (EPA). We continue to believe it necessary to fully review the new EPA rule, including EPA guidance, prior to adopting this state rule. (INPAC)

Response: IDEM is aware of the very short time-frame within which action must occur. However, IDEM remains committed to crafting a rule that will be approvable by EPA and will comport with federal law. IDEM continues to work closely with EPA during this rulemaking process and will not propose a final rule without continued discussions with EPA and all interested parties.

Comment: We also believe that this general permit rule must not exceed the requirements released by EPA without adequate notice and full review and discussion by the Environmental Quality Service Council (EQSC). If IDEM believes there is cause to impose regulations more stringent than the federal rule, they should identify these proposals, provide justification to the environmental circumstance warranting the change and explain how the federal law is inadequate. There should also be a written notice to EQSC as to the financial impact and expected environmental benefit of the proposed restrictions that exceed the federal EPA rule. (INPAC)

Response: There are a number of similar proposals that apply to the rulemaking process in general that are currently being debated in the 2003 Indiana general assembly. Should any such changes to the process be signed into law, IDEM will comply with all requirements for providing information, fiscal or otherwise, to the EQSC or whatever is required under law. IDEM's current draft rule is only, other than minor provisions more stringent than federal law as it relates to a construction review. That particular requirement is a state law requirement under existing IC 13-18-10.

Comment: 327 IAC 5-4-3 Definitions. We believe under Section 3b(4) that land application area must contain a provision for land application agreements. Oftentimes, a pork operation will have an agreement with an owner which is not construed to be owned, rented or leased. Under Section 3b(6), manure storage area, we believe composting piles to mean manure composting piles and not mortality composting piles. This may be further clarified in federal EPA guidance, however its listing in the manure storage area would signify this is what is intended. Section 3b(8)(i) and (ii) refer to waters of the state. To keep within the federal rule guidelines, this should say waters of the US, if indeed there is any distinction between US and state waters. (INPAC)

Response: Regarding the access agreement, the definition has been changed to include access agreements. In the definition of "manure storage area", the reference to composting is a reference to manure composting, not mortality composting. Indiana is authorized to issue permits to sources who discharge to waters of the state. Because there is, indeed, a difference between the definition of "waters of the US" and "waters" as defined for state environmental law, limiting the reference to waters of the United States incorrectly characterizes and limits the waters into which a NPDES discharge in the state may occur.

Comment: 15-15-2 Definitions. In Section 2(1) we are concerned about the confusion that will be created by using a reference to the manure management plan (MMP) under 327 IAC 16. As we do not fully know what EPA will require to meet their Nutrient Management Plan (NMP) standard, this reference should be citing the federal NMP and not the state MMP. The exception would be the placement of a statement that MMP meets the federal standard of the NMP. If the MMP does not or will not, this subsection should be stricken. Under this general NPDES permit rule, the operator should be forced to do two management plans, one to satisfy IDEM (the MMP) and the other to satisfy EPA (the NMP). We should not have duplicative requirements. (INPAC)

Response: IDEM agrees that confusion over the 2 terms could occur. To clarify the requirements, language has been added at 15-15-4(b) providing that compliance with sections 9 and 10 of the rule constitutes compliance with the requirements related to a NMP and use of BMPs, as required under the amended effluent guidelines found at 40 CFR 412.

Comment: We are also concerned about the wholesale adoption of the FOTG 590 Standard on phosphorus and other technical effects without further review and definition of what is required by EPA in their December 15th rule. As new EPA standards are developed, it would be wise to build in flexibility rather than be tied to one set named standard. (INPAC)

Response: The reference to the 590 standard was included at the request of EPA. Language has been added to build in flexibility to allow a demonstration that an alternative method will satisfy the intent of the 590 standards and be as environmentally protective. IDEM also intends to work with U.S. EPA and others as the rule progresses to address concerns by EPA staff that the Indiana NRCS 590 Standards need revision to include more ascertainable measures of success.

Comment: Applicability. In Section 3(dc) there is a reference made to the land application standards of 327 IAC 16-10. The cross-referencing to 327 IAC 16-10 does not fit with the NPDES general rule format. If the intent is to have land application standards applicable to NPDES general permit holders. they should be included in the general permit rule. This will eliminate confusion between the two very different processes (federal and state). These references to the state CFO rule should be stricken throughout this entire document. If the information in the state CFO rule is relevant to federal CAFOs to be consistent, the information should be placed in this rule. (INPAC)

Response: It is a standard practice to cross-reference rule citations, rather than rewriting existing rules into newly amended rules. Given the expedited time-frame of this rulemaking, it was determined that cross-referencing was an expeditious way to assure that all of the requirements are listed in the rule. However, in order to clarify for all interested parties what the expectations of the rules are, IDEM agrees that removing cross references and writing out specific requirements is preferable. IDEM will continue to work to remove as many cross references as possible and will work to craft a 'stand alone' version of the rule as we work toward final adoption.

Comment: Notice of Intent Letter Requirements. In Section 5(b)(1) this should read owner OR operator to be consistent with the federal EPA rule. Section 5(b)(9) receiving Stream, makes no sense, is not part of the federal EPA rule and should be stricken. These are zero discharge operations, so we can't understand how this is relevant. We find no reference in the EPA rule where they want to know the nearest locations of waters and to include this point just allows the information to be taken out of context. Section 5(b)(10) CFO reference number is again confusing in a federal NPDES program. We would propose you strike this language, As you know, one of our key concerns over the federal NPDES program is the dual state and federal permitting system this creates. Use of the CFO number implies a dual authority scenario again and should be eliminated. Regarding Section 5(d), while we understand the federal intent is to provide the public notice we do not know if the applied reference meets the requirements put forth in CFR Section 124.10. Any referenced notice should comply with this standard and not be more stringent than the standard as well. With reference to Section 5(e)(2) there is no reference we can find to a monthly publication in the federal EPA rule. Notification through a public notice and to the interested public should suffice. Until this is further explained, we would see the "monthly publication" going beyond federal intent and therefore unnecessary. We would also encourage the newspaper publication requirement e restated to read the public notice. (INPAC)

Response: Reference to the receiving stream information has been deleted. Although 40 CFR 122.28 lists receiving stream information as a requirement for a NPDES application, the amended federal CAFO rule specifically has removed it as a requirement. The requirement for a CFO identification number for CFOs that currently have an approval number should not be a hardship and will allow staff to keep accurate records to assure that there is, in fact, no undue duplication between the CFO and CAFO programs. IDEM has removed the language that may have required publication by an applicant in a newspaper of the intent of a facility to be covered by the NPDES permit. The monthly publication that IDEM uses to provide notice of NOIs received is consistent with IDEM's policy on all other NPDES general permits. 40 CFR 122.28(b) provides that anyone must have the ability to petition the commissioner, at any time, to require an individual permit for a source that intends to be, or is covered by a NPDES general permit. It would be difficult for someone to petition if he or she was not aware that a notice of intent had been submitted. IDEM's publication is intended to provide information to the interested public.

Comment: 15-15-6 Notice of Intent Submittal Deadline. Due to the exposure of CAFOs to citizen legal actions, we would suggest additional language under Section 6. Utilizing language regarding the permit application shield for the air program (327 IAC 2-7-3), we would suggest the addition of language which would say, "If a CAFO submits a timely and complete notice of intent application for an individual NPDES permit or application for renewal, any failure of that CAFO to have an NPDES permit is not a violation of this rule." (INPAC)

Response: No application shield exists under the Clean Water Act, as it does under the Clean Air Act. Including such a shield would render the state program less stringent than federal law. Although the suggested language would protect the applicant from state enforcement, it would not protect the applicant from citizen suits under the Clean Water Act. The general permit rule notes that coverage under NPDES occurs 30 days after the department receives the NOI unless notified that there is a problem with the NOI.

Comment: 15-15-7 General Conditions. Section 7(b) should be modified in accordance with our earlier comments regarding the confusion surrounding dual authority by dual references to the state CFO rule. We would recommend you include the language regarding performance standards in 327 IAC 16-3-1 and eliminate additional references to 327 IAC 16 and the requisite MMP. Again, this will serve to streamline the dual permitting problem by allowing for similar outcomes without duplicative paperwork and confusing authority. (INPAC)

Response: IDEM agrees and will work to remove the cross-references to the CFO program and spell out specific requirements within the rules in the version of the rule that is presented for final adoption.

Comment: 15-15-8 Specific Permit Conditions. We would propose subsection (1) be deleted altogether. Again the reference to the MMP is irrelevant to the federal NMP unless it suffices to meet federal NMP requirements. It does not make sense to require CAFOs to keep dual state and federal permitting systems. No other entities that hold NPDES permits, including industries and municipalities are also required by statute to have a separate state permit. In subsection (2), please not our earlier comment regarding the use of the NRCS 590 standard. We would suggest IDEM modify this language. Regarding subsections (3) - (8), these must be reviewed to ensure they fully comply with federal EPA rules. Language that goes beyond the federal rule should be stricken. References to the state CFO rule, as in (7) (8)(D) and (G), should be stricken and replaced with federal EPA rule language. Any conditions beyond that, which may be further defined by EPA's guidance in 2003, should not be in this rule until EPA speaks. (INPAC)

Response: The specific permit conditions section has been substantially altered. The requirement to obtain construction approval provides the necessary safeguards before a new operation is constructed that the existing rule's construction standards will be met. The federal NPDES permit program is not a construction program but an operation program. States generally supplement the federal NPDES permit program for wastewater treatment plants and for facilities such as CAFOs with a state construction permit program. Flexibility has been built into the rule regarding the use of the NRCS 590 standard which would allow someone to demonstrate that an alternate method is as environmentally protective as the 590 standard. IDEM will continue to work with EPA to clarify provisions of the rule as we move through the process.

Comment: 15-15-9 Inspection and Enforcement. We have a concern with the confidentiality of on-farm records as noted in Section 9(a). In the federal EPA rule, the intent was for a CAFO annual report to be made available upon the public's request. The information from the annual report should suffice and confirm that the CAFO is appropriately controlling any discharge and is following its nutrient management plan. To go beyond this intent and copy "any" records, which now become part of the public record, goes beyond federal intent. (INPAC)

Response: The language mirrors language for NPDES permits found at 40 CFR 122.41(i). It is a federal requirement.

Comment: 15-15-11 Duration and Renewal of Coverage. Section 13(c) implies a dual permit system. In accordance with our previous comments regarding dual permitting, we would propose you delete the last two sentences in subsection (c). (INPAC)

Response: The last 2 sentences of the subsection have been removed.

Comment: Sec. 3(a) Apparently applies to a limited range of potential CAFO waste, but should also include eggs, eggshells, egg wash water, feathers, hair, carcasses, vomit, urine, waste food, and any material contaminated with manure etc. (SC)

Response: The rules apply to all animals in confinement, all manure, litter, and process wastewater generated by those animals or the production of those animals. The terms "manure" and "process wastewater" are defined to further clarify what is encompassed in the rule. The above listed materials would all be covered by the definition of process wastewater.

Comment: Sec. 3(b)3 defines CAFOs as large and medium based on numbers of animals of various types as stated in the federal regulations. These are far in excess of 327 IAC Article 15 definitions of CFOs under that rule. Does this revision of NPDES applicability indicate a potential revision of 327 IAC 16? Does this indicate that CAFOs smaller than medium will not be required to have NPDES permits? (SC)

Response: The CFO definition is the state statutory definition and is different than the federal definition. Any CFO that discharges into the water, regardless of size, may be required to apply for a NPDES permit.

Comment: Sec. 3(b)9B indicates that the NPDES permit is applicable to waste that is released to the waters of the state via a ditch or other manmade conveyance. What about overland runoff, animals with direct access to streams, and release to groundwater that flows into a stream? (SC)

Response: That definition has been removed from the rule because it was also removed from the federal rules under the most recent amendments. IDEM will not approve confinement operations that allow the animals direct access to waters of the state. Any discharge into waters of the state is prohibited under this rule. IDEM also added a prohibition against animals having direct contact with water in the General Conditions Section.

Comment: Sec. 3(b)10 - what are the criteria that will allow certification of "no potential to discharge"? How is it possible to arrive at this for material that runs off with rainwater from confinement areas and disposal sites? (SC)

Response: EPA has indicated that the "no potential to discharge" demonstration will have to meet a very high standard. If all manure pits are covered and the operation engages in no land application of manure, the demonstration may be met. IDEM will continue to work with EPA to determine what criteria would be necessary for an applicant to meet this very difficult standard.

Comment: Sec. 3(c)2 exempts a facility from applying for a permit or compliance with the state has inspected the facility. At the current capacity to even inspect complaints, much less current CFO permits, how can the state possibly get to these facilities? Many months will pass with many of them failing to meet standards. (SC)

Response: The requirement that a small AFO operation cannot be designated as a CAFO without a site visit is from the federal rules. The reality is that if there is a violation at a smaller operation which is discovered either as a part of routine inspection or due to a reported problem, an inspector will be sent to the site to assess the situation. AFOs that are subject to the state CFO approval problem are required by law to report any discharges to waters of the state, which is the very thing that could require them to be designated as CAFOs. Failure to report any such discharges would result in additional violations for the facility.

Comment: Sec. 3(d) exempts the large facilities but not the medium CAFOs. What is the reasoning behind this exemption of the largest facilities, which may potentially have the greatest problems? *(SC)*

Response: The exemption language in subsection (d) is new language under the federal rule. The "no potential to discharge" exemption is a very difficult standard for any CAFO to meet. The requirement for demonstrating no potential to discharge has not been extended to small and medium AFOs since the specific criteria that must be met prior to an AFO becoming a CAFO is the existence of a discharge. Whereas large AFOs are defined as CAFOs based on the number of animals alone, small and medium AFOs only become CAFOs after meeting specific discharge-related criteria. Note that the commissioner can require a NPDES permit from any facility that demonstrates that there is no potential to discharge should there be a change in circumstances at the facility that would change the potential to discharge status.

Comment: Sec. 10(d) does not allow for citizen input or comment on permits. In addition, both the original CFO permit application and the NPDES permits should be available to responsible individuals for review and comment as required under the Clean Water Act. (SC)

Response: The no potential to discharge request must be public noticed. Although there is no provision for public comment on the request, the general public will know when such a request is submitted and can provide information that may refute the basis for such a request. Any decision on the no potential to discharge request is, as with any agency final decision, appealable under IC 4-21.5. Any individual NPDES permit issued will go out for public notice and comment, as required under the Clean Water Act.

Comment: Sec. 12 allows discharges to waters of the state if they do not exceed the limits for 40 CFR 412. This reverses the Indiana CFO rule of "zero discharge". It also violates the intent of the TMDL concept, which does not allow new discharges with out assessing the current stream waste loads and the capacity of the stream to accept additional contaminants. (SC)

Response: The discharge limit allowed under the 412 guidelines is still "zero discharge". The 412 requirements apply to large CAFOs, which must be designed to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event. Any overflow as the result of a larger rainfall event is considered agricultural stormwater, which is exempt under the Clean Water Act. Any discharge is required to meet state water quality standards.

Comment: Sec. 3(d) does make the NPDES permit apply to the waste disposal site, but allows contamination if the application meets IAC 16 guidelines. This runs counter to the intent of Article 16 for "zero discharge". Additionally, Article 16 does not adequately specify land application criteria. In addition to relatively poor specifications for nutrient loading calculations, it does not address phosphorus, nor provide the best available practices as recommended in such guidance as NRCS Conservation Practices Standards 590 and 633, or other relevant guidance. Because failure to correctly manage the waste can lead to serious, long-term damage, allowing such a "loose" requirement invites noncompliance with potential fraud in preparing waste management plans coupled with the need to prove willful noncompliance before the agency can prosecute, will cause severe damage with no remedy or punishment. (SC)

Response: The practices for land application contained in the referenced Article 16 rules represent the best management practices required to be applied under the new federal rules. IDEM has worked closely with EPA during the development of those rules as well as these CAFO rules to ensure that the practices required in the rule meet federal requirements. All permitted CAFOs will be required to test for phosphorus, pursuant to NRCS standard 590, under these rules.

Comment: Prior to issuance of a State Operating or NPDES permit, the public must be afforded the opportunity to comment on the proposed permit. A Public Notice or Notice of Intent should be issued, the proposed permit should be forwarded to entities that have requested to be on a mailing list, and copies of the proposed permit must be provided to adjacent and neighboring landowners (those within 2 miles of the site). The comment period must be for a period of at least 30 days. (SC)

Response: This issue is currently the subject of pending legislation in SB 533. The outcome of that legislation will effect what type of notice and comment period will be provided.

Comment: No General Permit (one-size-fits-all) should be issued to large CAFOs (more than 5,000 Animal Units*, for example) to any operation that has had a water quality violation within the past 5 years, nor to any operation under contract with an agribusiness "integrator". The large operations, violators, and contract operations must obtain a site-specific individual permit. (SC)

Response: IDEM believes that the NPDES general permit for CAFOs is the most efficient method of regulation for existing CAFOs that have not had a discharge given the fact that each operation must engage in best management practices and develop plans for both the production and land application areas of the operation. Individual permits would not, as a general matter, provide additional environmental protection for established CAFOs that have had not had a discharge in the majority of cases. Individual permits will still be required in instances where there are water quality violations and other appropriate situations.. This allows IDEM to focus its

resources on those operations that are problematic.

Comment: Any permit issued (whether GP or individual) must prohibit discharge of animal wastes to waters of the state. Any discharge of wastewater to waters of the state, including groundwater, shall constitute a violation of the no-discharge permit. This should apply to all components of a CAFO: growing or confinement buildings, cesspits, and land application areas. (SC)

Response: The general permit as well as any individual permit issued does prohibit the discharge of animal wastes to waters of the state.

Comment: 4.a. Each CAFO must prepare and implement a Comprehensive Nutrient Management Plan (detailing how the operation will land apply animal feces and urine). This CNMP must be made available to the public during the Public Notice and Comment Period, and should be considered an essential component of the permit. The CNMP, in short, becomes a permit condition. (SC)

Response: The combination of the manure management plan and the additional requirements of this rule constitute the basic requirements covered by a Nutrient Management Plan (NMP) required in the federal regulation. Facilities may develop a Comprehensive Nutrient Management Plan (CNMP) but are not required to do so as long as the other requirements of the rule are met. All permittees under this rule are required to submit an annual report that summarizes much of the information required in the plans. The plans must be kept on-site and used in the daily operation of the facility.

Comment: 4.b. There must be a prohibition against land application of wastes on frozen or snow-covered ground and during, prior to forecasted, or immediately after, rain events. (Also see #7 below). (SC)

Response: The prohibition against applying on frozen ground has been added to the rule. Article 16 rules, which apply to permittees under this rule as well, prohibit land application on saturated ground.

Comment: 5. The conditions of any permit issued must be sufficient to protect water quality and water resources. Since General Permits are a one-size-fits-all permit, the permit conditions must be scrutinized to ensure that ground and surface waters will not be negatively affected. (SC)

Response: This general permit rule requires that each permittee engage in best management practices each day of operation of the facility. Soil and manure testing is required as well as setbacks for land application. Specific manure management practices are built into the rule as well. All of these requirements are meant to assure that each facility subject to the rule will engage in practices that protect the environment every day. In cases where the general permit requirements are not sufficient to address a specific environmental problem, the commissioner has the authority to issue an individual permit.

Comment: 6. Cesspits (a.k.a. “lagoons”) must be constructed or lined in such a fashion that leakage does not occur. NOTE: While this seems to be self-explanatory and reasonable, many states permit cesspits to leak at prescribed rates. The cesspit should not leak or spill over under ANY circumstances. (SC)

Response: The design requirements for new earthen manure storage structures do allow for a seepage rate not to exceed 1/16th of an inch per day. Such new structures must also be certified by a professional registered engineer. The commissioner can also require monitoring systems, liners, or other protective measures if determined necessary to protect the environment. All new systems must be designed to hold the run-off from a twenty-five year, twenty-four hour storm and must have an emergency spillway that directs manure and wastes to secondary containment, a manure storage structure or a vegetative management system such as a filter strip. All systems must be designed to minimize leaks and seepage and prevent spills. Any discharge from such systems to state waters remains a violation.

Comment: 7. Animal wastes must be applied as fertilizer at optimal agronomic rates. This entails annual soil tests and the crop to be grown — the rate of application must be based on the needs of the soils for a specific crop. For example: legumes (alfalfa, soybeans, peanuts) don’t require nitrogen, so any plan to apply manures to these crops would not meet the “fertilizer test”. NOTE: There is no agronomic rate for trace metals (such as lead or chromium), consequently these should NEVER be land applied. (SC)

Response: Permittees are required to apply at agronomic rates and determine plant uptake in developing such rates. Soil and manure testing is required in this rule. Because the requirement to apply at the phosphorus rate is being phased into this rule it is believed that the level of trace metals that will be land applied will be very minimal.

Comment: 8. Any stormwater runoff of manure components from a land application area shall be indisputable evidence that the no-discharge permit condition has been violated. To ascertain this, upstream and downstream monitoring is required. (SC)

Response: As long as a permittee applies manure in conformity with the requirements of this rule and has a facility that is designed to handle the stormwater run-off from a twenty-five year, twenty-four hour storm, additional run-off from the facility will be considered agricultural stormwater, which is exempt from regulation under the Clean Water Act. Therefore, any stormwater run-off may not be indisputable evidence that the permit has been violated.

Comment: 9. Any GP or individual permit issued to a CAFO must require 1) upstream and downstream monitoring and 2) monitoring points where stormwater exits the land application area. (SC)

Response: The existing rules and this proposed general permit rule are a 'zero discharge' rule. In order to verify that no discharge exists, the rule requires documentation that the best management practices are being followed and that any discharge be reported. It is neither practical or necessary to attempt to monitor directly any runoff from this type of an operation. The state and federal rules rely on best management practices instead of discharge monitoring to protect the waters of the state.

Comment: 10 Cesspits should be of sufficient volume to store feces and urine generated by the CAFO and to hold a rain event of ANY duration (i.e., 24-hour/25-year, 24-hour/100-year, or a rainfall event lasting several days). The cesspits should be constructed in such a fashion that no runoff waters enter the pits — only direct rainfall should enter the pits. Consequently, even if there is a rainfall of 12 inches, the cesspit should only rise by 12 inches. (SC)

Response: Lagoons must be designed to contain a twenty-five year, twenty-four hour rainfall event. Further, the facility must be designed to contain the stormwater run-off from such a rainfall event as well. The run-off can be diverted to the lagoon or other stormwater retention devices. Lagoons must also contain depth markers that provide an estimate of capacity. Most new CFOs have lagoons described as above but there are existing operations that drain storm water from open lots into a lagoon. The open lot could have manure that is carried by the storm water into the lagoon. It is this type of operations that must be able to manage the specific rain event.

Comment: 11. No CAFO should be issued a permit or allowed to be constructed in a watershed of an impaired water body, a state or national outstanding resource waters, or in a watershed where the stream or river is in danger of not meeting "fishable/swimmable" standards. (SC)

Response: CAFOs subject to this rule must not discharge to waters of the state. If they comply with the rule, they will not contribute to water quality problems at any impaired waterbodies.

Comment: 12. The permit must require posting of a financial assurance instrument sufficient to properly enact closure of all cesspits associated with the CAFO. (SC)

Response: Financial assurance is not required under federal rules and has not been found to be necessary to ensure proper closeout of lagoons and facilities. The closure of such lagoons is not a significant cost and the state has not experienced a problem with such closures not occurring.

Comment: 13. The issuing agency must conduct random, unannounced inspections of the CAFO. (SC)

Response: IDEM currently conducts close to a 1000 inspections of CFOs and CAFOs annually and will continue to inspect as resources allow. Inspections are conducted randomly. Inspectors often contact a facility when they are in route to do an inspection to assure that someone will be there to discuss any specific bio-security provisions that must be followed to prevent the spread of any diseases.

Comment: 14. The issuing agency will respond to complaints of permit violations within 24 hours. (SC)

Response: IDEM currently responds to complaints for any facility subject to environmental rules as rapidly as practical. Typically, the agency does respond to complaints concerning spills in less than twenty-four (24) hours. Based on the nature of non-emergency complaints the response may be longer than twenty-four (24).

Comment: 15. The permit fee and the funds generated shall be sufficient to cover the costs of the issuing agency in administering the program, including comments 12 and 13 above. (SC)

Response: Fees are established by the General Assembly and are therefore not a rulemaking issue.